

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-81

U.S. BANK, N.A., trustee,<sup>1</sup>

vs.

JEAN G. ATKINSON.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, Jean Atkinson, appeals from certain postjudgment orders. We dismiss so much of Atkinson's appeal as is from the order denying her motion to waive the appeal bond and affirm the remainder.

In September 2017, approximately six months after default judgment entered for the plaintiff, U.S. Bank, in this postforeclosure summary process action,<sup>2</sup> Atkinson filed what she

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<sup>1</sup> Of the LSF8 Master Participation Trust.

<sup>2</sup> Atkinson had no direct appeal from the summary process default judgment. See Rule 12 of the Uniform Summary Process Rules (2004). As such, the judgment itself is not before us. To challenge a summary process default judgment a party must move for relief from judgment under Mass. R. Civ. P. 60 (b), 365 Mass. 828 (1974). See Rule 11 (b) of the Uniform Summary Process Rules (1980). After default judgment entered Atkinson filed a series of motions seeking a stay of execution; the record does not shed great light on those motions but Atkinson now asserts she argued, in essence, that because she had been employed to care for a certain patient, and because she was unable to arrange for a substitute caregiver for that patient,

called a "Motion to [C]larify Plaintiff's [L]egal [E]xist[e]nce as a Trust," asserting that the trust did not exist. A motion judge ruled that "[t]o the extent that [Atkinson] is seeking a ruling on the legal sufficiency of [U.S. Bank's] standing to bring this action," U.S. Bank had two weeks to provide documentation of the trust's legal status.

As ordered, U.S. Bank produced to Atkinson a certified copy of a certificate of trust; that certificate shows on its face that U.S. Bank is the "Owner Trustee" of the "LSF8 Master Participation Trust" (Trust), a Delaware trust organized and registered under the Delaware Statutory Trust Act, Del. Code Ann. tit. 12, § 3801 et seq. Upon receipt of that certificate Atkinson filed what she characterized as a motion to dismiss, arguing that the certificate "is not proof of the existence of a legal securitized trust."<sup>3</sup> A motion judge, on November 16, 2017, orally denied Atkinson's motion after noting that the prior motion judge's order had been complied with.

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she had been unable to attend trial and could not vacate the premises. Execution was stayed for certain periods but Atkinson's then-most recent motion finally was denied by order entered August 10, 2017. Atkinson did not notice an appeal from that order. Accordingly, and assuming for present purposes only that the pre-September 2017 motions to stay execution properly could be deemed to have been made under rule 60 (b), those motions, and the August 10 order, are not before us.

<sup>3</sup> U.S. Bank agrees that the Trust is not a "securitized trust." Instead, U.S. Bank asserts that the Trust is a "statutory trust." See Del. Code Ann. tit. 12, § 3801(g).

For present purposes we construe Atkinson's motions as having been made under Mass. R. Civ. P. 60 (b), 365 Mass. 828 (1974). We review an order denying such motion for abuse of discretion. Cullen Enters., Inc. v. Massachusetts Prop. Ins. Underwriting Ass'n, 399 Mass. 886, 894 (1987). There was no such abuse in this case.

Insofar as we understand it, Atkinson argues that U.S. Bank lacked standing because the Trust is not a "legal trust." The certificate produced demonstrates on its face that the Trust is, in fact, a properly organized and existing trust. Although Atkinson now asserts that the trust certificate does not adequately prove that the Trust is a "legal trust," she does not comprehensibly explain what she means by this phrase and has identified in the record, and our independent review has found, no competent evidence raising any genuine question regarding the certificate's authenticity or casting doubt on either U.S. Bank's or the Trust's status.

We need not consider Atkinson's additional assertions, to the effect that U.S. Bank failed to raise a prima facie claim that it had a superior right of possession. Assuming Atkinson properly raised these objections below she nonetheless has brought to our attention no competent record evidence suggesting that her objections may have merit. Nor has Atkinson included in the record before us any of U.S. Bank's prejudgment

submissions.<sup>4</sup> It is Atkinson's burden, as the appellant, to include in her appendix all materials "to which the parties wish to direct the particular attention of the court." Mass. R. A. P. 18 (a), as amended, 425 Mass. 1602 (1997). See Cameron v. Carelli, 39 Mass. App. Ct. 81, 83-84 (1995). Lacking a full and complete record, which would include U.S. Bank's critical prejudgment evidentiary submissions, see note 4, supra, we are unable meaningfully to review Atkinson's claims or, more pertinently here, determine whether the motion judge abused discretion by denying Atkinson's rule 60 (b) motion.

Finally, we observe that so much of the January 16, 2018 order as denied Atkinson's motion to reduce or waive the appeal bond is not properly before us. See G. L. c. 239, § 5 (f) (appeal by party "aggrieved by the denial of a motion to waive the appeal bond . . . shall be to the single justice of the appeals court"). The motion judge did not abuse her discretion or otherwise prejudice Atkinson's substantial rights, see G. L. c. 231, § 119, by denying Atkinson's seventh successive motion to stay execution.

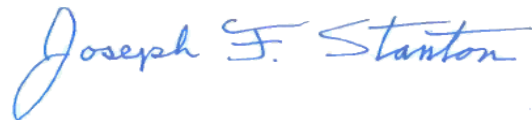
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<sup>4</sup> Despite Atkinson's assertion that U.S. Bank made no supporting submissions the docket reflects that, along with its summary process complaint, U.S. Bank filed at least the following: (i) a notice to quit; (ii) an assignment of mortgage; (iii) a foreclosure deed; and (iv) a rule 10 military affidavit. Neither the summary process complaint nor any of these additional documents have been reproduced in the record before us.

The appeal from so much of the January 16, 2018 order as denied the motion to waive the appeal bond is dismissed. In all other respects, that order and the order entered November 16, 2017, are affirmed.

So ordered.

By the Court (Vuono, Hanlon & Shin, JJ.<sup>5</sup>),



Clerk

Entered: August 19, 2019.

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<sup>5</sup> The panelists are listed in order of seniority.